IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03/03/2004

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

SECOND APPEAL No.1029 of 1993

1. C.Subramanian
2. C.Siddherthan
3. C.Muthaiyan .. Appellants

-vs-

1. Subramaniyan
2. Arunachalam
3. Gangeyan .. Respondents

This second appeal is preferred under Sec.100 of the Code of Civil Procedure against the judgment and decree made in A.S.No.75 of 1985 dated 16.11.1987 on the file of the Sub Court, (and in West Thanjavur District Court A.S.No.81 of 1985) Thanjavur, confirming the judgment and decree made in O.S.No.152/81 dated 30.11.1983 on the file of the District Munsif, Thiruvaiyaru.

!For Appellants : Mr.A.Thamizharasan

^For Respondents : Mr.V.K.Vijayaraghavan
for RR2 and 3

R1 - No appearance

:JUDGMENT

The unsuccessful plaintiffs before the Courts below in a suit for permanent injunction or in the alternative, for recovery of possession, is the appellants herein.
2. Necessary facts for the disposal of this second appeal are as follows:
The suit properties were the absolute properties of one Muruganantham Pillai, who was the maternal grandfather of the plaintiffs. He executed a registered Will on 4.12.1973 in respect of his properties including the suit properties. As per the terms of the Will, the property comprised in 'A' Schedule was given to the plaintiffs. Muruganantham Pillai died on 17.12.1978. Thus, the Will came into force, and consequently, the plaintiffs have become entitled to 'A' Schedule property under the said Will. The plaintiffs were in possession and enjoyment of the properties in 'A' Schedule.

While so, the defendants made an attempt to interfere in the lawful possession of the plaintiffs, which constrained the plaintiffs to file the suit for permanent injunction. If the Court was to come to the conclusion that the plaintiffs were not entitled to the properties, they were entitled to recovery of possession.

3. The first defendant was absent and set ex-parte. The suit was vehemently resisted by the defendants 2 and 3 stating that the suit properties were the absolute properties of Muruganantham Pillai; that he has not executed any Will; that even assuming that he executed any Will, Muruganantham Pillai had no right in the properties to execute such a Will; that after the death of Muruganantham Pillai, when the said Will was produced for registration, the second defendant objected to the same; that he also made it clear during the registration proceedings that his father Muruganantham Pillai had not executed any Will, and thus, the plaintiffs have not become entitled to 'A' Schedule property in the Will; that the properties in question belonged to the joint family; that the plaintiffs have suppressed an important fact that the document of the year 1920, on the basis of which Muruganantham Pillai purported to deal with the said properties, was not a Will; but, it was an arrangement by the second defendant's grandfather Arunachalam Pillai for the management of the joint family properties during the minority of their father; that a perusal of the document of the year 1920 would make it clear that Arunachalam Pillai merely appointed a guardian under the terms thereof, and thus, he has not executed any Will; that the plaintiffs were also not in possession of the properties, and thus, they were neither entitled for injunction nor for recovery of possession, and hence, the suit was to be dismissed.

4. The trial Court framed the necessary issues, tried the suit and dismissed the same. An appeal filed by the aggrieved plaintiffs was also dismissed by the first appellate Court. Hence, this second appeal has been brought forth by the plaintiffs.

5. At the time of admission, the following substantial questions of law were formulated for consideration by this Court:

(1) Was the lower appellate Court right in dismissing the application for reception of additional documents, and whether such rejection has affected the case of the appellants?

(2) Were the Courts below right in holding that no right flowed to the plaintiffs/appellants on the basis of the Will dated 4.12.1973?

6. This Court heard the learned Counsel for the appellants and also the learned Counsel for the respondents 2 and 3 on those contentions.

7. This Court is unable to notice any substance in this appeal.

8. As could be seen from the averments in the plaint, the plaintiffs/appellants sought for the reliefs of injunction and in the alternative, recovery of possession, basing their title in respect of 'A' Schedule property, alleging that one Muruganantham Pillai executed a Will, the registration copy of which was marked as Ex.A4 dated 4.12.197 3; that he died on 17.12.1978, and thus, the Will has come into force; that they became entitled to the properties, and they were also in possession of the same. The second defendant, the son of the said Muruganantham Pillai, contested the suit by stating that neither his father executed a Will as found under Ex.A4, nor had he got any right to execute so, since the properties belonged to the joint family; and that the anterior document, relied on by the plaintiffs would also

stand contra to the plaintiffs case. Many are the circumstances, which stood against the case of the plaintiffs. The plaintiffs have not produced the original Will, alleged to have been executed by Muruganantham Pillai on 4.12.1973. No satisfactory explanation was tendered why the original Will was not produced before the trial Court. It is not the case, where the defendants have admitted the existence or the execution of the Will; but they have strongly denied the same. In such circumstances, a duty was cast upon the plaintifs to prove the truth and genuineness of the Will, as contemplated under law. Not even one witness was examined to prove the alleged Will, and the original Will was not produced. Also no proof as to the execution and attestation of the Will was forthcoming from the plaintiffs' side.

9. The plaintiffs relied on an earlier Will alleged to have been executed by Arunachalam Pillai, the father of Muruganantham Pillai and grandfather of the second defendant. Both the Courts below have clearly pointed out that the document alleged to have been executed by Arunachalam Pillai in the year 1920 would clearly reveal that the properties in question belonged to the joint family. Under such circumstances, Muruganantham Pillai was also not competent to execute a Will, as alleged by the plaintiffs. It remains to be stated further that the three properties were covered under the said Will. But, the plaintiffs have come forward in respect of only one item of property, while the other two properties have already been dealt with. There is no evidence that there was any partition between the said Muruganantham Pillai and the second defendant. In such situation, Muruganantham Pillai was not competent to execute any Will, as alleged by the plaintiffs, in respect of the suit item, which belonged to the joint family. All the above would clearly indicate that the plaintiffs have not proved the case to obtain the relief of either injunction or recovery of possession. Hence, both the Courts below were perfectly correct in recording a concurrent finding that the Will alleged to have been executed by Muruganantham Pillai, was not proved in any way, and the plaintiffs claiming title under the Will, could not get any relief. This Court is unable to notice any reason to disturb the concurrent finding recorded by the lower Courts.

10. For the foregoing reasons, this second appeal fails, and the same is dismissed, confirming the judgments and decrees of the lower Courts and leaving the parties to bear their costs.

Index: Yes

Internet: Yes

To:
1. The Subordinate Judge
Thanjavur
2. The District Munsif
Thanjavur
3. The Record Keeper
V.R. Section
High Court, Madras.